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EPFO, HEAD OFFICE
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA
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No. Pension/2022/56259/16541

Date: 20.02.2023

To

20 FEB 2023

All Addl. CPFCs, Zonal Offices
All RPFCs / OICs, Regional Offices

Sub: Instructions in compliance of orders contained in Para 44 (iii) & (iv) read with Para 44(v) of Hon'ble Supreme Court judgement dated 04.11.2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019.

Madam/ Sir,

In compliance of the above said orders of the Hon'ble Supreme Court and directions of the Central Government, it is directed as under:

2. The field offices should implement the directions contained in Para 44(iii) & (iv) read with Para 44(v) of the judgement dated 04.11.2022 of the Hon'ble Supreme Court within the stipulated timeline.

3. As may be seen, the Hon'ble Supreme Court has pronounced judgement dated 04.11.2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019. The relevant directions of the Court with respect to the above-mentioned subject are as follows:

"44 (iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme".

"44(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1st September 2014 stands crystallised in the judgment of this Court in the case of R.C. Gupta (supra). The scheme as it stood before 1st September 2014 did not provide for any cut-off date and thus those members shall be entitled to exercise option in terms of paragraph 11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering pre-amended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme. There was uncertainty as regards validity of the post amendment scheme, which was quashed by the aforesaid judgments of the three High Courts. Thus, all the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cut-off date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further period of four months. We are giving this direction in exercise of our jurisdiction under Article 142 of the Constitution of India. Rest of the requirements as per the amended provision shall be complied with".

"44 (v) The employees who had retired prior to 1st September 2014 without exercising any option under paragraph 11(3) of the pre-amendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment."

4. Accordingly, **the employees who did not exercise option** as contemplated in the proviso to paragraph 11(3) of the Pension Scheme (as it was before the 2014 Amendment) would be entitled to exercise joint option under erstwhile para 11(3) & existing para 11(4) within the aforesaid extended period of four months. The employees who had exercised option under Para 11(3) of EPS 1995 and continued to be in service on or after 01.09.2014 will be guided by the amended provisions of paragraph 11(4) of the pension scheme, i.e. if they had not exercised the option within the time specified under Para 11(4), such employees shall not be eligible to exercise option within the extended period of four months.

5. Therefore, in compliance of the Hon'ble Supreme Court judgement dated 04.11.2022, following employees with their employers may submit joint option under para 11(3) and 11(4) to the concerned Regional Office:

- i. The employees and employers who had contributed under paragraph 26(6) of EPF Scheme on salary exceeding the prevalent wage ceiling of Rs 5000/- or 6500/-; and
- ii. did not exercise joint option under the proviso to Para 11(3) of the pre-amendment scheme (since deleted) while being members of EPS,95; and
- iii. were members prior to 01.09.2014 and continued to be a member on or after 01.09.2014.

6. The manner in which such employees would apply to the concerned Regional Office is as follows:

- i. The request will be made in such form and manner, as may be specified by the Commissioner.
- ii. The joint option will contain the disclaimer and declaration as may be specified therein.
- iii. In case of share requiring adjustment from Provident Fund to Pension Fund, and if any re-deposit to the fund, explicit consent of the employee will be given in the joint option form.
- iv. In case of transfer of funds from exempted provident fund trust to pension fund of EPFO, an undertaking of the trustee shall be submitted. The undertaking shall be to the effect that due contribution along with interest up to the date of payment, will be deposited within the specified period.
- v. In case of employees of unexempted establishments, refund of requisite employer's share of contribution, the same shall be deposited with interest at the rate declared under Para 60 of EPF Scheme, 1952, till the date of actual refund.
- vi. **The method of deposit and that of computation of pension will follow through subsequent circular.**
- vii. Aforesaid joint option must contain the proof of remittance of employer's share in Provident Fund on higher wages exceeding the prevalent wage ceiling of Rs. 5,000/6,500 and proof of joint option under Para 26(6) of EPF Scheme duly verified by the employer.

7. The above application forms when received in the time period specified in the Joint Option Form will be dealt with in the following manner by the Regional P.F. Commissioner:

- i. A facility will be provided for which URL will be informed shortly. Once received, the Regional P. F. Commissioner shall put up adequate notice on the notice board and banners for wider public information.
 - ii. Each application will be registered and digitally logged. The receipt number will be provided to the applicant.
 - iii. The application will land into the employer's login whose verification with Digital Signature/ e-sign will be essential for further processing.
 - iv. RPFC will cause each application to be converted into e-file, as far as possible.
 - v. The concerned dealing assistant will examine the papers including the note on receipt of due amount in the Pension Fund, and mark the case to Section Supervisor / Account Officer.
 - vi. The concerned SS / AO will mark out discrepancies, if any and send it after due examination, with the rule position to APFC / RPFC-II for deciding the case.
 - vii. The concerned APFC/RPFC-II shall examine each case of joint option on higher salary and the decision shall be intimated to the applicant through e-mail/post. Efforts will be made to intimate them through telephone/SMS also.
8. Officer-in charge of the concerned Regional Office will send a weekly monitoring report to the respective zonal office. Zonal Office will also report the aggregate position of the zones weekly to the Pension Division at Head Office.
9. Any grievance by the applicant can be registered on EPFIGMS after submission of his joint option form and payment of due contribution, if any. The registration of such grievance shall be under specified category of higher pension with reference to Supreme Court Judgment dated 04.11.2022. All such grievances shall be addressed and disposed of at the level of Nominated Officer. Grievances will be monitored by the Officer in-charge of Regional Office and Zonal Office.
10. These directions are issued in compliance of the judgement dated 04.11.2022 of Hon'ble Supreme Court for immediate implementation.
11. This circular is being issued in addition to earlier instructions dated 29.12.2022 & 05.01.2023 issued on this subject.

[This issues with the approval of CPFC.]

Yours faithfully,

(Aprajita Jaggi)

Regional PF Commissioner-I (Pension)

Copy To:

1. PS to Secretary to the Government of India, Ministry of Labour and Employment.
2. Under Secretary to the Government of India, Ministry of Labour & Employment with reference to letter No. R-15011/03/2022-SS-II dated 15.02.2023.
3. PS to CPFC.
4. All ACCs HQ and ACCs at H.O for information & necessary action. Further for online applications, URL may please be informed to field offices by ISD.
5. Rajbhasha section for providing Version in Hindi.